IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 248/2006
Reserved on 21.5.2007
Decided on 29.5.2007

Prem Lal **…Petitioner.**

Versus

Union of India & others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes*

For the petitioner : **Mr. Rahul Mahajan, Advocate**

For the respondent No.1 **Mr. Ashwani Pathak, Central Government Counsel.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in the Army (J&K Rifles) on 3rd January, 1986. He was invalided out from service on 20th July, 1967 under Rule 13 item iii (III) of Army Rule, 1954 due to pulmonary tuberculosis. His invaliding Medical Board was held at 8 Air Force Hospital Secundrabad on 13th June, 1967 and the same was approved by the Assistant Director Medical Services Andhra (Indep) Sub area Secunderabad on 30th June, 1967. The duly constituted Medical Board had assessed the disability of the petitioner at 100% for one year and also opined that the disability of the petitioner was attributable to military service. Consequently he was granted disability pension @ Rs.47/- per month including service element with effect from 21st July, 1967 to 12 June 1968 vide letter dated 21st June, 1968. Subsequently on review of medical board, he was granted disability pension

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?yes.

including service element upto 3rd July, 1996 continuously. The petitioner was brought before the Re-survey Medical Board on 7th May, 1996 at Command Hospital (Western Command) Chandimandir. The duly constituted Medical Board had reassessed his disability upto 20% permanent. The claim of the petitioner for disability pension was forwarded to PCDA (P) Allahabad alongwith Re-survey Medical Board proceedings for adjudication on 13th July, 1996 and while adjudicating the claim, Medical Advisor (Pension) has assessed his disability less than 20% (i.e. 11% to 14%) permanent (for ten years). The PCDA (P) Allahabad vide letter dated 4th November, 1996 rejected the disability pension. The petitioner has denied the receipt of letter 29th November, 1996.

Pursuant to letter dated 7th February, 2001 the low medical category personnel who were granted temporary disability pension, were directed to appear before Re-survey Medical Board for one time final award for their disability pension for life. He was brought before the Re-survey Medical Board on 22nd August, 2003 at Command Hospital (Western Command), Chandimandir). His disability was assessed less than 20% for life. He was also advised that in case he was not satisfied with the decision, he could prefer an appeal against the decision of the Medical Board. He preferred an appeal on 28th December, 2003 against the decision of the Re-survey Medical Board and his appeal was forwarded to Army Headquarters on 27th January, 2004. The appeal preferred by him was duly considered by Army Headquarters for fresh Re-survey Medical Board. The fresh Re-survey Medical Board of the petitioner was held on 3rd March, 2005 at Army Hospital, Delhi Cantonment. The Medical Board reassessed his disability at 20% for life with effect from 3rd March, 2005. His disability pension claim alongwith medical document was forwarded to PCDA (Pension) Allahabad

vide letter dated 21st March, 2005 and the petitioner was granted pension @ Rs. 310/- per month with effect from 22nd August, 2003 for life.

The petitioner was informed vide letter dated 28th October, 2004 that his disability was discontinued from 3rd July, 1996 and as such a sum of Rs. 1,75,904/- for the period 4th July, 1986 to 31st July, 2004 was to be refunded . The petitioner was not served with any notice before the issuance of letters dated 28.10.2004 and 2.9.2005.

Mr. Rahul Mahajan, Advocate appearing on behalf of the petitioner has submitted that the petitioner cannot be called upon to deposit a sum of Rs. 1,75,904/- on the basis of communication dated 28.10.2004 and 2.9.2005. Mr. Mahajan has further argued that the petitioner at no given time has misled the authorities and he has been paid the disability pension with effect from 4.7.1996 to 31.7.2004 by the authorities concerned of their own.

Mr. Ashwani Pathak, Central Government Counsel appearing on behalf of respondents has supported the issuance of Annexures P-1 and P-2 respectively.

I have heard the parties and perused the record.

The petitioner has been granted the disability pension with effect from 21st July, 1967 upto 3rd July, 1996. His disability at the time of granting the disability pension of Rs. 47/- was 100% for one year and on 3rd July, 1996 the disability was assessed at 20% for ten years. The Re-survey Medical Board had assessed the disability of the petitioner less than 20% and his disability pension was rejected on 4th November, 1996. Though it is stated in the reply that communication dated 29th November, 1996 was sent to the petitioner but the petitioner has denied the receipt of the same.

The petitioner had been made to appear before Re-survey Medical Board for one time final award on 22nd August, 2003. The petitioner's

disability was assessed at less than 20%. The appeal of the petitioner against the decision of Re-survey Medical Board was duly considered by the Army Head Headquarters and a duly constituted Medical Board reassessed his disability at 20% for life with effect from 3rd March, 2005. Consequently the petitioner was granted the disability pension/service element @ Rs. 310/- per month with effect from 3rd March, 2005 for life vide communication dated 31st July, 2005. If the disability of the petitioner has been assessed at 20% for life by the duly constituted Medical Board on 3rd March, 2005, it is not understandable why the same was assessed less than 20% by the Medical Board on 7th May, 1996. Petitioner's disability has again been reassessed at 20% for life with effect from 3rd March, 2005. It is clear that the petitioner's disability was continuously more than 20% with effect from 4th July, 1996 till 3rd March, 2005 and in between the petitioner's disability has not been assessed properly. The assessment of the petitioner's disability by Re-survey Medical Board of 3rd March, 2005 will necessarily relate back to 3rd July, 1996 for the purpose of payment of disability pension. The issuance of Annexure P-1 and P-2 directing the petitioner to deposit a sum of Rs. 1,75,904/- and out of which Rs. 31,372/- had been deduced, is arbitrary and unreasonable. The petitioner at no given time has misled the authorities and he was paid the disability pension with effect from 4th July, 1996 to 31st July, 2004 by the authorities.

The matter can be viewed from another angle. The petitioner had been granted disability pension on the basis of the medical board. The petitioner has not been issued any show cause notice before the issuance of letter 29th November, 1996. The petitioner could not be directed abruptly to deposit a sum of Rs. 1,75,904/-. It is settled law that any order which has civil consequences must be passed in conformity with principles of natural justice. Assuming that the petitioner has been informed on 29th November,

1996 but after reconvening of the Re-survey Medical Board on 3rd March, 2005 whereby the petitioner's disability has been assessed at 20%, the period from 4th July, 1996 to 31st July, 2004 will be deemed to have been regularized.

The upshot of the above discussion is that the petitioner could not be deprived of the disability pension with effect from 4th July, 1996 to 31st July, 2004 on the basis of the Re-survey Medical Board held on 3rd March, 2005. The issuance of Annexures P-1 and P-2 directing the petitioner to deposit a sum of Rs. 1,75,904/- is arbitrary and unreasonable and liable to be quashed and set aside.

Accordingly, the writ petition is allowed. The Annexures P-1 and P-2 are quashed and set aside. The respondents are directed to refund a sum of Rs. 31,272/- to the petitioner illegally recovered from his pension within a period of six weeks from the date of receipt of copy of judgment.

There shall be no order as to costs.

(Rajiv Sharma), Judge

May 29, 2007
Awasthi